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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

13 **KENNETH ERIC LEE**
14 1043 Driftwood Drive
Palm Springs, CA 92264

15 Registered Nurse License No. 594359
16 Public Health Nurse Certificate No. 64742

17 Respondent.

Case No. 2009-41

ACCUSATION

PETITION TO REVOKE
PROBATION

Case No. 2005-177

18
19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation and
22 Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board
23 of Registered Nursing ("Board"), Department of Consumer Affairs.

24 **Registered Nurse License**

25 2. On or about February 6, 2002, the Board issued Registered Nurse License
26 Number 594359 to Kenneth Eric Lee ("Respondent"). The registered nurse license will expire
27 on May 31, 2009, unless renewed.

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1 **Public Health Nurse Certificate No. 64742**

2 3. On or about February 20, 2002, the Board issued Public Nurse Certificate
3 No. 64742 to Respondent. Respondent's public health nurse certificate will expire on May 31,
4 2009, unless renewed.

5 **Prior Discipline**

6 4. Effective May 1, 2006, pursuant to the Decision and Order in Accusation
7 No. 2005-177, the Board revoked Respondent's Registered Nurse License No. 594359 and
8 Public Nurse Certificate No. 64742. However, the revocation was stayed and Respondent's
9 license and certificate were placed on probation for a period of three (3) years, with certain terms
10 and conditions. A copy of the Decision and Order in *In the Matter of the Accusation Against*
11 *Kenneth Eric Lee*, Case No. 2005-177, is attached as **Exhibit A** and is incorporated by reference.

12 **STATUTORY PROVISIONS**

13 5. Business and Professions Code ("Code") section 2750 provides, in
14 pertinent part, that the Board may discipline any licensee, including a licensee holding a
15 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code
16 section 2750) of the Nursing Practice Act.

17 6. Code section 2764 provides, in pertinent part, that the expiration of a
18 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
19 against the licensee or to render a decision imposing discipline on the license. Under Code
20 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
21 years after the expiration.

22 7. Code section 2761 states, in pertinent part:

23 The board may take disciplinary action against a certified or licensed nurse
24 or deny an application for a certificate or license for any of the following:

25 (a) Unprofessional conduct. . . .

26 8. Code section 2762 states, in pertinent part:

27 In addition to other acts constituting unprofessional conduct within the
28 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
 for a person licensed under this chapter to do any of the following:

1 (a) Obtain or possess in violation of law, or prescribe, or except as
2 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
3 himself or herself, or furnish or administer to another. . . any dangerous drug or
4 dangerous device as defined in Section 4022.

5 9. Code section 4022 states, in pertinent part,

6 "Dangerous drug" or "dangerous device" means any drug or device unsafe
7 for self-use in humans or animals, and includes the following:

8 (a) Any drug that bears the legend: "Caution: federal law prohibits
9 dispensing without prescription," "Rx only," or words of similar import.

10 10. Code section 118, subdivision (b), states:

11 The suspension, expiration, or forfeiture by operation of law of a license
12 issued by a board in the department, or its suspension, forfeiture, or cancellation
13 by order of the board or by order of a court of law, or its surrender without the
14 written consent of the board, shall not, during any period in which it may be
15 renewed, restored, reissued, or reinstated, deprive the board of its authority to
16 institute or continue a disciplinary proceeding against the licensee upon any
17 ground provided by law or to enter an order suspending or revoking the license or
18 otherwise taking disciplinary action against the licensee on any such ground.

19 11. DRUG

20 "Tramadol", is a dangerous drug within the meaning of Code section 4022, in
21 that under federal law it requires a prescription.

22 ACCUSATION

23 COST RECOVERY

24 12. Code section 125.3 provides, in pertinent part, that the Board may request
25 the administrative law judge to direct a licensee found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

28 FIRST CAUSE FOR DISCIPLINE

(Possess and Self-Administer Dangerous Drug in Violation of Law)

13 Respondent's registered nurse license is subject to disciplinary action
14 under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined
15 in Code section 2762, subdivision (a), in that on or about November 15, 2007, and November 26,
16 2007, while licensed as a registered nurse, Respondent did the following:

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1 a. Respondent possessed Tramadol, a dangerous drug, in violation of Code
2 section 4022.

3 b. Respondent self-administered Tramadol, a dangerous drug, without
4 direction from a licensed physician, surgeon, dentist or podiatrist.

5 **PETITION TO REVOKE PROBATION**

6 14. Grounds exist for revoking the probation and reimposing the order of
7 revocation of Respondent's Registered Nurse License No. 594359 and Public Health Nurse
8 Certificate No. 64742. Condition 12 of the Decision and Order, OAH No. L2005110059, states,
9 in pertinent part:

10 **12. Violation of Probation.**

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12 If Respondent violates the conditions of his probation, the Board after
13 giving Respondent notice and an opportunity to be heard, may set aside the stay
14 order and impose the stayed discipline (revocation/suspension) of Respondent's
15 license.

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17 If during the period of probation, an accusation or petition to revoke
18 probation has been filed against Respondent's license or the Attorney General's
19 Office has been requested to prepare an accusation or petition to revoke probation
20 against Respondent's license, the probationary period shall automatically be
21 extended and shall not expire until the accusation or petition has been acted upon
22 by the Board.

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1 15. Respondent has violated the Order, as set forth in the following
2 paragraphs:

3 **FIRST CAUSE TO REVOKE PROBATION**

4 (Failure to Report)

5 16. At all times after the effective date of Respondent's probation, Condition 3
6 stated:

7 **3. Report in Person.** Respondent, during the period of probation,
8 shall appear in person at interviews/meetings as directed by the Board or its
designated representatives.

9 17. Respondent's probation is subject to revocation because he failed to
10 comply with Probation Condition 3, referenced above. The facts and circumstances regarding
11 this violation are as follows:

12 a. On or about December 27, 2006, the Board mailed to Respondent notice of
13 a mandatory probation meeting scheduled on January 11, 2007. Respondent failed to submit a
14 request to reschedule the meeting and failed to attend the meeting.

15 b. On or about February 1, 2007, the Board mailed to Respondent notice of a
16 mandatory probation meeting scheduled on February 22, 2007. Respondent failed to submit a
17 request to reschedule the meeting and failed to attend the meeting.

18 **SECOND CAUSE TO REVOKE PROBATION**

19 (Failure to Submit Written Reports)

20 18. At all times after the effective date of Respondent's probation, Condition 5
21 stated, in pertinent part:

22 **5. Submit Written Reports.** Respondent, during the period of
23 probation, shall submit or cause to be submitted such written reports/declarations
24 and verification of actions under penalty of perjury, as required by the Board.
These reports/declarations shall contain statements relative to Respondent's
25 compliance with all the conditions of the Board's Probation Program.
Respondent shall immediately execute all release of information forms as may be
required by the Board or its representatives.

26 19. Respondent's probation is subject to revocation because he failed to
27 comply with Probation Condition 5, referenced above. The facts and circumstances regarding
28 this violation are that Respondent failed to provide the Board with Quarterly Written Reports for

the period July 2006 through September 2006, October 2006 through December 2006, January 2007 through March 2007, April 2007 through June 2007, July 2007 through September 2007, October 2007 through December 2007, and January 2008 through March 2008.

THIRD CAUSE TO REVOKE PROBATION

(Chemical Dependency Support/Recovery Group Attendance)

20. At all times after the effective date of Respondent's probation, Condition 15 stated:

15. Participate in Treatment/Rehabilitation Program for Chemical Dependence. Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

21. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 15, referenced above, as follows:

a. On or about March 1, 2007, the Board mailed to Respondent an Advisory Notice requiring Respondent to attend a nurse support group meeting once a week. Between on or about January 8, 2008, and March 31, 2008, Respondent failed to attend a nurse support group meeting once a week.

b. Respondent failed to provide the Board with dated and signed documentation confirming his attendance at a nurse support group meeting once a week.

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1 **FOURTH CAUSE TO REVOKE PROBATION**

2 (Failure to Abstain from Alcohol Use; Failure to Provide Prescribing Professional's Report)

3 22. At all time after the effective date of Respondent's probation, Condition
4 16 stated:

5 **16. Abstain from Use of Psychotropi (Mood Altering Drugs).**

6 Respondent shall completely abstain from the possession, injection or
7 consumption by any route of all controlled substances and all psychotropic
8 (mood altering) drugs, including alcohol, except when the the same are
9 ordered by a health care professional legally authorized to do so as part
10 of documented medical treatment. Respondent shall have sent to the Board,
in writing and within fourteen (14) days, by the prescribing health
professional, a report identifying the medication, dosage, the date the
medication was prescribed, the Respondent's prognosis, the date the
medication will no longer be required, and the effect on the recovery plan,
if appropriate.

11 Respondent shall identify for the Board a single physician, nurse
12 practitioner or physician assistant who shall be aware of Respondent's
13 history of substance abuse and will coordinate and monitor any prescriptions
14 for Respondent for dangerous drugs, controlled substances or mood-altering
15 drugs. The coordinating physician, nurse practitioner, or physician assistant
shall report to the Board on a quarterly basis Respondent's compliance with
this condition. If any substances considered addictive have been prescribed,
the report shall identify a program for the time limited use of any such
substances.

16 The Board may require the single coordinating physician, nurse
17 practitioner, or physician assistant to be a specialist in addictive medicine,
or to consult with a specialist in addictive medicine.

18 23. Respondent's probation is subject to revocation because he failed to
19 comply with Probation Condition 16, referenced above. The facts and circumstances regarding
20 this violation are as follows:

21 a. Respondent tested positive for alcohol in a random drug screening on
22 January 2, 2008.

23 b. Respondent tested positive for Tramadol in random drug screenings on
24 November 15, 2007, and November 26, 2007. Respondent failed to submit to the Board a
25 written report for a prescription for Tramadol from the prescribing health professional.

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1 FIFTH CAUSE TO REVOKE PROBATION

2 (Failure to Submit to Tests and Samples)

3 24. At all times after the effective date of Respondent's probation, Condition
4 17 stated:

5 **17. Submit to Tests and Samples.** Respondent, at his expense, shall
6 participate in a random, biological fluid testing or a drug screening program which
7 the Board approves. The length of time and frequency will be subject to approval
8 by the Board. Respondent is responsible for keeping the Board informed of
9 Respondent's current telephone number at all times. Respondent shall also ensure
10 that messages may be left at the telephone number when he is not available and
11 ensure that reports are submitted directly by the testing agency to the Board, as
12 directed. Any confirmed positive finding shall be reported immediately to the
13 Board by the program and Respondent shall be considered in violation of
14 probation.

15 In addition, Respondent, at any time during the period of probation, shall
16 fully cooperate with the Board or any of its representatives, and shall, when
17 requested, submit to such tests and samples as the Board or its representatives
18 may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or
19 other controlled substances.

20 If Respondent has a positive drug screen for any substance not legally
21 authorized and not reported to the coordinating physician, nurse practitioner, or
22 physician assistant, and the Board files a petition to revoke probation or an
23 accusation, the Board may suspend Respondent from practice pending the final
24 decision on the petition to revoke probation or the accusation. This period of
25 suspension will not apply to the reduction of this probationary time period.

26 If Respondent fails to participate in a random, biological fluid testing or
27 drug screening program within the specified time frame, Respondent shall
28 immediately cease practice and shall not resume practice until notified by the
Board. After taking into account documented evidence of mitigation, if the Board
files a petition to revoke probation or an accusation, the Board may suspend
Respondent from practice pending the final decision on the petition to revoke
probation or the accusation. This period of suspension will not apply to the
reduction of this probationary time period.

29 25. Respondent's probation is subject to revocation because he failed to
30 comply with Probation Condition 17, referenced above. The facts and circumstances regarding
31 this violation are as follows:

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1 a. Respondent failed to appear for random drug testing as required on
2 September 28, 2007, October 4, 2007, October 18, 2007, December 14, 2007, December 20,
3 2007, December 31, 2007, January 30, 2008, February 4, 2008, February 7, 2008, February 11,
4 2008, March 7, 2008, March 11, 2008, March 13, 2008, March 18, 2008, March 31, 2008,
5 April 3, 2008, and April 28, 2008.

6 b. Respondent failed to call in for random drug testing as required on
7 August 11, 2007 through August 26, 2007; September 1, 2007, through September 3, 2007;
8 September 8, 2007 through September 10, 2007; September 13, 2007, through September 16,
9 2007; September 18, 2007; September 20, 2007, through September 30, 2007; October 1, 2007,
10 through October 31, 2007; November 1, 2007, through November 11, 2007; November 17, 2007;
11 November 18, 2007; November 22, 2007; November 24, 2007; November 25, 2007;
12 December 1, 2007; December 2, 2007; December 8, 2007; December 9, 2007; December 15,
13 2007; December 16, 2007; December 21, 2007, through December 25, 2007; December 29,
14 2007; January 1, 2008; January 3, 2008; January 5, 2008, through January 7, 2008; January 12,
15 2008, through January 31, 2008; February 1, 2008 through February 29, 2008; March 1, 2008,
16 through March 31, 2008; and April 1, 2008, through April 29, 2008.

17 **SIXTH CAUSE TO REVOKE PROBATION**

18 (Failure to Comply with Terms of Probation Program)

19 26. At all times after the effective date of Respondent's probation, Condition 2
20 stated, in pertinent part:

21 **2. Comply with the Board's Probation Program.**

22 Respondent shall fully comply with the conditions of the Probation
23 Program established by the Board and cooperate with representatives of the Board
24 in its monitoring and investigation of the respondent's compliance with the
25 Board's Probation Program.

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1 27. Respondent's probation is subject to revocation because he failed to
2 comply with Probation Condition 2, because he failed to comply the conditions of the Probation
3 Program by failing to comply with Probation Condition Nos. 3, 5, 15, 16 and 17, as more fully
4 set forth in paragraph 17, subparagraphs a and b; paragraph 19; paragraph 21, subparagraphs a
5 and b; paragraph 23, subparagraphs a and b; and paragraph 25, subparagraphs a and b, above.

6 **PRAYER**

7 **WHEREFORE**, Complainant requests that a hearing be held on the matters
8 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 9 1. Revoking the probation that was granted by the Board of Registered
10 Nursing in Case No. 2005-177, and imposing the disciplinary order that was stayed thereby
11 revoking Registered Nurse License No. 594359, issued to Kenneth Eric Lee;
- 12 2. Revoking the probation that was granted by the Board of Registered
13 Nursing in Case No. 2005-177, and imposing the disciplinary order that was stayed thereby
14 revoking Public Health Nurse Certificate No. 64742, issued to Kenneth Eric Lee;
- 15 3. Revoking or suspending Registered Nurse License No. 594359, issued to
16 Kenneth Eric Lee;
- 17 4. Revoking or suspending Public Nurse Certificate No. 64742, issued to
18 Kenneth Eric Lee;
- 19 5. Ordering Kenneth Eric Lee to pay the Board of Registered Nursing the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
21 125.3; and
- 22 6. Taking such other and further action as deemed necessary and proper.

23 DATED: 8/21/08



RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision and Order

Office of Administrative Hearing Case No. L2005110059

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KENNETH ERIC LEE
1043 Driftwood Drive
Palm Springs, CA 92264

Registered Nurse License No. 594359

Respondent

Case No. 2005-177

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on May 1, 2006.

IT IS SO ORDERED March 30, 2006.



Vice-President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 BILL LOCKYER, Attorney General
of the State of California
2 LINDA SCHNEIDER, State Bar No. 101336
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3 Attorneys for Complainant

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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 KENNETH ERIC LEE, R.N.
14 1043 Driftwood Drive
15 Palm Springs, CA 92264

16 Registered Nurse License No. 594359
17 Public Health Nurse Certificate No. 64742

18 Respondent.

Case No. 2005-177

OAH No. L2005110059

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 PARTIES

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is
24 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Linda
25 Schneider, Supervising Deputy Attorney General.

26 2. Respondent Kenneth Eric Lee, R.N. Kenneth Eric Lee, R.N. (Respondent)
27 is representing himself in this proceeding and has chosen not to exercise his right to be
28 represented by counsel.

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2005-177.

4 10. Respondent agrees that his Registered Nurse License is subject to
5 discipline and he agrees to be bound by the Board of Registered Nursing (Board) 's imposition of
6 discipline as set forth in the Disciplinary Order below.

7 RESERVATION

8 11. The admissions made by Respondent herein are only for the purposes of
9 this proceeding, or any other proceedings in which the Board of Registered Nursing or other
10 professional licensing agency is involved, and shall not be admissible in any other criminal or
11 civil proceeding.

12 CONTINGENCY

13 12. This stipulation shall be subject to approval by the Board of Registered
14 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
15 Board of Registered Nursing may communicate directly with the Board regarding this stipulation
16 and settlement, without notice to or participation by Respondent. By signing the stipulation,
17 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind
18 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
19 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall
20 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
21 between the parties, and the Board shall not be disqualified from further action by having
22 considered this matter.

23 13. The parties understand and agree that facsimile copies of this Stipulated
24 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
25 force and effect as the originals.

26 14. In consideration of the foregoing admissions and stipulations, the parties
27 agree that the Board may, without further notice or formal proceeding, issue and enter the
28 following Disciplinary Order:

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1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction
6 of this probation time period. Respondent's probation is tolled, if and when he resides outside of
7 California. Respondent must provide written notice to the Board within 15 days of any change of
8 residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where he has ever been
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
14 new nursing license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation,
16 shall submit or cause to be submitted such written reports/declarations and verification of actions
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency
22 in every state and territory in which he has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24
25 hours per week for 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
28 work in any non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
3 Board.

4 If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of his good faith efforts to comply with
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may
7 grant an extension of Respondent's probation period up to one year without further hearing in
8 order to comply with this condition. During the one year extension, all original conditions of
9 probation shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent
11 shall obtain prior approval from the Board before commencing or continuing any employment,
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to his employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within
18 seventy-two (72) hours after he obtains any nursing or other health care related employment.
19 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
20 or separated, regardless of cause, from any nursing, or other health care related employment with
21 a full explanation of the circumstances surrounding the termination or separation.

22 **8. Supervision.** Respondent shall obtain prior approval from the Board
23 regarding Respondent's level of supervision and/or collaboration before commencing or
24 continuing any employment as a registered nurse, or education and training that includes patient
25 care.

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Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. Employment Limitations. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

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Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$3128.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

1 12. **Violation of Probation.** If Respondent violates the conditions of his
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
3 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
4 license.

5 If during the period of probation, an accusation or petition to revoke probation has
6 been filed against Respondent's license or the Attorney General's Office has been requested to
7 prepare an accusation or petition to revoke probation against Respondent's license, the
8 probationary period shall automatically be extended and shall not expire until the accusation or
9 petition has been acted upon by the Board.

10 13. **License Surrender.** During Respondent's term of probation, if he ceases
11 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
12 probation, Respondent may surrender his license to the Board. The Board reserves the right to
13 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
14 take any other action deemed appropriate and reasonable under the circumstances, without
15 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
16 will no longer be subject to the conditions of probation.

17 Surrender of Respondent's license shall be considered a disciplinary action and
18 shall become a part of Respondent's license history with the Board. A registered nurse whose
19 license has been surrendered may petition the Board for reinstatement no sooner than the
20 following minimum periods from the effective date of the disciplinary decision:

21 (1) Two years for reinstatement of a license that was surrendered for any
22 reason other than a mental or physical illness; or

23 (2) One year for a license surrendered for a mental or physical illness.

24 14. **Physical Examination.** Within 45 days of the effective date of this
25 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
26 physician assistant, who is approved by the Board before the assessment is performed, submit an
27 assessment of the Respondent's physical condition and capability to perform the duties of a
28 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If

1 medically determined, a recommended treatment program will be instituted and followed by the
2 Respondent with the physician, nurse practitioner, or physician assistant providing written
3 reports to the Board on forms provided by the Board.

4 If Respondent is determined to be unable to practice safely as a registered nurse,
5 the licensed physician, nurse practitioner, or physician assistant making this determination shall
6 immediately notify the Board and Respondent by telephone, and the Board shall request that the
7 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
8 shall immediately cease practice and shall not resume practice until notified by the Board.
9 During this period of suspension, Respondent shall not engage in any practice for which a license
10 issued by the Board is required until the Board has notified Respondent that a medical
11 determination permits Respondent to resume practice. This period of suspension will not apply
12 to the reduction of this probationary time period.

13 If Respondent fails to have the above assessment submitted to the Board within
14 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
15 practice until notified by the Board. This period of suspension will not apply to the reduction of
16 this probationary time period. The Board may waive or postpone this suspension only if
17 significant, documented evidence of mitigation is provided. Such evidence must establish good
18 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
19 provided. Only one such waiver or extension may be permitted.

20 **15. Participate in Treatment/Rehabilitation Program for Chemical**
21 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
22 period or shall have successfully completed prior to commencement of probation a Board-
23 approved treatment/rehabilitation program of at least six months duration. As required, reports
24 shall be submitted by the program on forms provided by the Board. If Respondent has not
25 completed a Board-approved treatment/rehabilitation program prior to commencement of
26 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
27 a program. If a program is not successfully completed within the first nine months of probation,
28 the Board shall consider Respondent in violation of probation.

1 Based on Board recommendation, each week Respondent shall be required to
2 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
3 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
4 by the Board. If a nurse support group is not available, an additional 12-step meeting or
5 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
6 such attendance to the Board during the entire period of probation. Respondent shall continue
7 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
8 mental health examiner and/or other ongoing recovery groups.

9 16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
10 shall completely abstain from the possession, injection or consumption by any route of all
11 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
12 the same are ordered by a health care professional legally authorized to do so as part of
13 documented medical treatment. Respondent shall have sent to the Board, in writing and within
14 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
15 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
16 medication will no longer be required, and the effect on the recovery plan, if appropriate.

17 Respondent shall identify for the Board a single physician, nurse practitioner or
18 physician assistant who shall be aware of Respondent's history of substance abuse and will
19 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
20 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
21 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
22 condition. If any substances considered addictive have been prescribed, the report shall identify a
23 program for the time limited use of any such substances.

24 The Board may require the single coordinating physician, nurse practitioner, or
25 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
26 addictive medicine.

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1 17. **Submit to Tests and Samples.** Respondent, at his expense, shall
2 participate in a random, biological fluid testing or a drug screening program which the Board
3 approves. The length of time and frequency will be subject to approval by the Board.
4 Respondent is responsible for keeping the Board informed of Respondent's current telephone
5 number at all times. Respondent shall also ensure that messages may be left at the telephone
6 number when he is not available and ensure that reports are submitted directly by the testing
7 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
8 to the Board by the program and Respondent shall be considered in violation of probation.

9 In addition, Respondent, at any time during the period of probation, shall fully
10 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
11 tests and samples as the Board or its representatives may require for the detection of alcohol,
12 narcotics, hypnotics, dangerous drugs, or other controlled substances.

13 If Respondent has a positive drug screen for any substance not legally authorized
14 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
15 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
16 from practice pending the final decision on the petition to revoke probation or the accusation.
17 This period of suspension will not apply to the reduction of this probationary time period.

18 If Respondent fails to participate in a random, biological fluid testing or drug
19 screening program within the specified time frame, Respondent shall immediately cease practice
20 and shall not resume practice until notified by the Board. After taking into account documented
21 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
22 Board may suspend Respondent from practice pending the final decision on the petition to
23 revoke probation or the accusation. This period of suspension will not apply to the reduction of
24 this probationary time period.

25 18. **Within 45 days of the effective date of the Decision and Order**

26 Respondent shall undergo one or more psychological, neuropsychological,
27 psychiatric or other mental health examinations. Each examination shall be conducted by a
28 licensed mental health professional approved by the Board. The type of mental health

1 professional (examiner) and specialty of examiner shall be determined by the Board. An
2 examiner may not have prior, current, or pending discipline with his or her licensing board or
3 agency. All costs for examinations are the responsibility of the Respondent.

4 Respondent shall sign a release of information form to allow each examiner to
5 communicate written and verbal information to the Board. The release shall also permit each
6 examiner to review any prior mental health examination(s) and other documentation determined
7 by the Board to be helpful. Respondent shall provide a copy of this Decision and Order, and of
8 any pleading referenced in the Decision and Order, to each examiner prior to the examination.

9 Respondent shall ensure that each examiner submit a written report to the Board
10 within thirty (30) calendar days after completion of each examination. Each report shall include
11 a written assessment of the Respondent's ability to practice safely as a registered nurse, including
12 as a registered nurse with advanced practice responsibilities, if so credentialed, and must include
13 a history and physical, relevant laboratory data, and psychometric testing, if indicated. If the
14 Respondent is determined to be unsafe to practice, the report shall state this conclusively, and
15 this shall be grounds to revoke, suspend, or otherwise inactivate a registered nurse's license,
16 and/or advanced practice certificate.

17 **Treatment, Therapy and Counseling Recommendations**

18 Each mental health report submitted by the examiner shall include
19 recommendations for Respondent to undergo treatment, therapy and counseling by a licensed
20 treatment professional(s). Within seven (7) calendar days of notification of such a
21 recommendation, Respondent shall provide the Board the name and qualifications of each
22 selected treatment professional. The treatment professionals shall have prior approval by the
23 Board, and shall have no prior, current, or pending discipline with his or her licensing board or
24 agency. All costs for treatment, therapy and counseling are the responsibility of the Respondent.

25 Respondent shall sign a release of information form to allow each treatment
26 professional to communicate written and verbal information to the Board. The release shall also
27 permit each treatment professional to review any prior mental health examination(s), report(s) from
28 treatment professionals, and other documentation determined by the Board to be helpful. Respondent

1 shall provide a copy of this Decision and Order, and of any pleading referenced in the Decision and
2 Order, to each treatment professional.

3 Respondent shall ensure that each treatment professional submit a written report to
4 the Board within thirty (30) calendar days of the treatment appointments. The frequency of the
5 appointments shall be no more than weekly and no less than every three months. All treatment
6 reports shall include, but not be limited to, Respondent's diagnosis, prognosis, any prescribed
7 medication, and recommendations for on-going treatment. Respondent shall undergo and continue
8 treatment by each treatment professional until the treatment professional determines that treatment
9 is no longer considered necessary. Any determination that treatment is no longer necessary shall be
10 stated in writing to the Board.

11 If the Respondent is determined to be unsafe to practice, the treatment professional
12 report shall state this conclusively, and this shall be grounds to revoke, suspend, or otherwise
13 inactivate a registered nurse's license, and/or advanced practice certificate.

14 **Respondent Unsafe to Practice or Has Adverse Change in Mental Status –**
15 **Board Action Taken**

16 The Board reserves the right to amend this Decision and Order based on the
17 examination results or the treatment professional's recommendations. If the examiner or the
18 treatment professional conclude that Respondent is unable to practice safely as a registered nurse or
19 as an advanced practice nurse, or that Respondent has had an adverse change in mental status
20 resulting in the inability to practice safely as a registered nurse or as an advanced practice nurse, the
21 examiner or treatment professional shall immediately notify the Board and Respondent by telephone.
22 The need to have treatment appointments in excess of once per week shall be deemed to be an
23 adverse change in mental status. If Respondent is unsafe to practice or has an adverse change in
24 mental status, the Board shall notify Respondent in writing to immediately cease practice, and
25 Respondent shall not resume practice until and unless notified by the Board in writing.

26 Following notification by the examiner or treatment professional that the Respondent
27 is unable or unsafe to practice, the Board shall request that the Attorney General's Office prepare an
28 accusation and/or petition to revoke probation. The filing of an accusation and/or petition to revoke

1 probation shall automatically invoke an actual disciplinary suspension from practice that shall
2 constitute a public record. During the time of the suspension, all conditions of probation shall
3 continue in force except for actual practice as a registered nurse. The suspension shall not apply to
4 the reduction of the probationary time period. Such suspension shall stay in effect until the final
5 disposition of the filed accusation and/or petition to revoke probation.

6 **Respondent Fails to Complete Exam or Attend Treatment Appointments**


7 If Respondent fails to complete the mental health examination(s) during the specified
8 time period, or fails to attend treatment appointments, Respondent shall provide to the Board
9 documentary mitigation evidence demonstrating a good faith effort to have the examination(s) or
10 treatment(s) during the specified time period. If adequate documentary evidence is received, the
11 Board may, in its discretion, determine that Respondent has not violated the probation conditions.

12 If respondent does not provide adequate mitigation evidence demonstrating a good
13 faith effort to have the examination(s) or treatment(s) during the specified time period, the
14 Respondent shall be deemed to be unsafe to practice. The Board shall notify Respondent in writing
15 to immediately cease practice, and Respondent shall not resume practice until and unless notified
16 by the Board in writing. Following notification of the Respondent, the same disciplinary procedures
17 as specified above shall be in force.

18 ACCEPTANCE

19 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand
20 the stipulation and the effect it will have on my Registered Nurse License. I enter into this
21 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to
22 be bound by the Decision and Order of the Board of Registered Nursing.

23 DATED: 2-8-06


24
25 
26 KENNETH ERIC LEE, R.N. (Respondent)
27 Respondent
28

1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
4 Affairs.

5
6 DATED: 2/9/06

7 BILL LOCKYER, Attorney General
8 of the State of California

9 
10 KEVIN M. GEOGHEGAN
11 Senior Legal Analyst

12 Attorneys for Complainant

13 DOJ Matter ID: SD2004801241
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EXHIBIT A
ACCUSATION NO. 2005-177

1 BILL LOCKYER, Attorney General
of the State of California
2 MARGARET A. LAFKO, State Bar No. 105921
Supervising Deputy Attorney General
3 Attorneys for Complainant

4 KEVIN M. GEOGHEGAN,
Senior Legal Analyst
5 California Department of Justice
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6 P.O. Box 85266
San Diego, CA 92186-5266
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Facsimile: (619) 645-2061
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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2005-177

13 KENNETH ERIC LEE
14 1043 Driftwood Drive
Palm Springs, CA 92264
15 Registered Nurse License No. 594359
Public Health Nurse Certificate No. 64742
16 Respondent.

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about February 6, 2002, the Board of Registered Nursing issued
24 Registered Nurse License Number 594359 to KENNETH ERIC LEE (Respondent). The license
25 will expire on May 31, 2005, unless otherwise renewed.

26 3. On or about February 20, 2002, the Board of Registered Nursing issued
27 Public Health Nurse Certificate No. 64742 to KENNETH ERIC LEE (Respondent). The license
28 will expire on May 31, 2005, unless otherwise renewed.

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1 ". . . .
2 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
3 entries in any hospital, patient, or other record pertaining to the substances described in
4 subdivision (a) of this section."

5 8. Section 2764 of the Code provides, in pertinent part, that the expiration of
6 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
7 against the licensee or to render a decision imposing discipline on the license. Under section
8 2811(b) of the Code, the Board may renew an expired license at any time within eight years after
9 the expiration.

10 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
11 request the administrative law judge to direct a licensee found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

14 FIRST CAUSE FOR DISCIPLINE

15 (Revocation of Nursing License by Another State)

16 10. Respondent is subject to disciplinary action under section 2761(a)(4) of
17 the Code in that Respondent's nursing license in another state has been revoked. The
18 circumstances are as follows:

19 11. On or about May 9, 2003, Administrative Complaint No. 2002-30230 was
20 filed by the Florida Department of Health against Respondent, alleging violations of Florida
21 Statutes, sections 464.018(1)(h) (Unprofessional Conduct), 464.018(1)(l) (Possession, Sale or
22 Distribution of Controlled Substances) and 456.072(1)(o) (Practicing or Offering to Practice
23 Beyond Scope Permitted by Law), in that Respondent, on at least 121 occasions, failed to
24 accurately record the withdrawal of controlled substances from the Pyxis system at Memorial
25 Regional Hospital in Hollywood Florida; and on at least 100 occasions obtained possession of
26 controlled substances without a prescription or physician order authorizing him to do so, and on
27 at least 100 occasions exceeded his professional responsibilities by withdrawing controlled

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1 substances from the Pyxis system for patients for whom prescriptions or physician orders had not
2 been issued.

3 12. On or about March 25, 2004, Respondent's license was revoked by the
4 State of Florida Board of Nursing for the above violations after Respondent failed to appear at
5 his scheduled hearing. Respondent's license was revoked for three years, and he was ordered to
6 obtain a psychological evaluation, submit a reentry plan, submit proof of continued treatment and
7 counseling if recommended by the psychological evaluation, and demonstrate two years of
8 documented continuous drug free/alcohol free living. Additionally, Respondent was ordered to
9 pay investigative costs of \$5,490.51, and to surrender his Florida Nursing License within 30
10 days. That decision is now final and is incorporated by reference as if fully set forth.

11 SECOND CAUSE FOR DISCIPLINE

12 (Possession of Controlled Substances)

13 13. Respondent is subject to disciplinary action under section 2762(a) of the
14 Code in that Respondent, on at least 100 occasions, obtained possession of controlled substances
15 without a prescription or physician order authorizing him to do so, as more fully set forth in the
16 Findings of Fact in the Final Order of the State of Florida Board of Nursing, incorporated herein.

17 THIRD CAUSE FOR DISCIPLINE

18 (Falsify/Alter Records)

19 14. Respondent is subject to disciplinary action under section 2762(e) of the
20 Code in that Respondent, on at least 100 occasions, Respondent falsified or altered records which
21 permitted him to obtain possession of controlled substances without a prescription or physician
22 order authorizing him to do so, as more fully set forth in the Findings of Fact in the Final Order
23 of the State of Florida Board of Nursing, incorporated herein.

24 PRAYER


25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Revoking or suspending Registered Nurse License Number 594359, issued
28 to KENNETH ERIC LEE.

1 2. Ordering KENNETH ERIC LEE to pay the Board of Registered Nursing
2 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: 3/28/05

6
7 
8 RUTH ANN TERRY, M.P.H., R.N.
9 Executive Officer
10 Board of Registered Nursing
11 Department of Consumer Affairs
12 State of California
13 Complainant

12 SD2004801241

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